

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

BIG LOTS, INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 24-11967 (JKS)

(Jointly Administered)

**Hearing Date: TBD**

**Objection Deadline: October 31, 2024 at 4 p.m. (ET)**

**THE FIFTH AVENUE LANDLORD’S MOTION TO COMPEL IMMEDIATE  
PAYMENT OF STUB RENT IN ACCORDANCE WITH BANKRUPTCY CODE § 503(b)**

Fifth/Grand Holdings, LLC (the “Fifth Avenue Landlord”) moves the Court to compel immediate payment of Stub Rent for the Fifth Avenue Store (as those terms are defined below) in accordance with 11 U.S.C. § 503(b) (“§ 503(b)”), and in support thereof respectfully states as follows:

**JURISDICTION**

1. This Court has jurisdiction over this Motion in accordance with 28 U.S.C. §§ 157 and 1334. This Motion is a core proceeding in accordance with 28 U.S.C. § 157(b)(2)(A), (B), (M) and (O). Venue is proper in accordance with 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested in this Motion are Bankruptcy Code (11 U.S.C. §§ 101 et seq.) §§ 105, 503 and 365.

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<sup>1</sup> The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers, are as follows: Great Basin, LLC (6158); Big Lots, Inc. (9097); Big Lots Management, LLC (7948); Consolidated Property Holdings, LLC (0984); Broyhill LLC (7868); Big Lots Stores – PNS, LLC (5262); Big Lots Stores, LLC (6811); BLBO Tenant, LLC (0552); Big Lots Stores – CSR, LLC (6182); CSC Distribution LLC (8785); Closeout Distribution, LLC (0309); Durant DC, LLC (2033); AVDC, LLC (3400); GAFDC LLC (8673); PAFDC LLC (2377); WAFDC, LLC (6163); INFDC, LLC (2820); Big Lots eCommerce LLC (9612); and Big Lots F&S, LLC (3277). The address of the debtors’ corporate headquarters is 4900 E. Dublin-Granville Road, Columbus, OH 43081.

**RELEVANT FACTS**

3. The Fifth Avenue Landlord is the lessor of Big Lots Store #5356, located at 1451 W. Fifth Avenue, Columbus, Ohio (the “Fifth Avenue Store”) pursuant to an unexpired written non-residential real property lease agreement dated June 30, 2017 between the Fifth Avenue Landlord and Big Lots Stores – CSR, LLC (the “Tenant”) (as amended from time to time, the “Lease”). The Lease is voluminous and, therefore, is not attached to this Motion; however, a copy of the Lease is available upon request.

4. In September, 2024, the monthly base rent for the Fifth Avenue Store was \$41,760.33 plus additional amounts due under the Lease, including insurance and taxes.

5. Big Lots, Inc. and its affiliated Debtors (including the Tenant) filed for Chapter 11 relief on September 9, 2024 (the “Petition Date”).

6. Since the Petition Date, the Tenant has continued to occupy, and the Debtors have received the benefits from the use of the Fifth Avenue Store. On October 4, 2024, the Fifth Avenue Store appeared on the list of additional stores at which the Debtors intend to conduct Store Closing Sales. See *Third Notice of Filing of List of Additional Closing Store ...*, Exhibit A (D.I. 424).

7. The Debtors have not paid base rent or other amounts due under the Lease for the period from the Petition Date through September 30, 2024 (collectively, “Stub Rent”). The total Stub Rent due is \$38,928.05, comprised of \$29,232.23 base rent; \$9,044.52 real estate taxes; \$492.46 insurance; and \$158.84 water.<sup>2</sup>

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<sup>2</sup> The aforementioned amounts represent 70% (i.e., 21 days) of the allocated September amounts due under the Lease. The Tenant did not make payment of the water bill and the Fifth Avenue Landlord made direct payment.

### **RELIEF REQUESTED**

8. Bankruptcy Code § 365(d)(3) requires a debtor-lessee of an unexpired lease of non-residential real property to “...timely perform all of the obligations of the debtor ...arising from and after the order for relief...” Bankruptcy Code § 365(d)(3) protects landlords by requiring debtor-tenants to timely perform their lease obligations. In re Montgomery Ward Holding Corp., 268 F.3d 205, 209 (3<sup>rd</sup> Cir. 2001).

9. Furthermore, Bankruptcy Code §§ 503 (a) and (b) allow a party to request payment of an administrative expense for the “... actual, necessary costs and expenses of preserving the estate...” Accordingly, a landlord is entitled to payment of an administrative expense for a debtor/tenant’s post-petition use and occupancy of a leased property. In re Goody’s Family Clothing Inc., 392 B.R. 604 (Bankr. D. Del. 2008), aff’d, 610 F.3d 812 (3<sup>rd</sup> Cir. 2010).

10. From the Petition Date through September 30, 2024, the Debtors had the use and benefit of the Fifth Avenue Store (and will continue to have the use and benefit of the store through at least the conclusion of the going out of business sale). Therefore, the Fifth Avenue Landlord is entitled to immediate payment of the Stub Rent and such other relief to which the Landlord is entitled at law or in equity.

### **RESERVATION OF RIGHTS**

The Fifth Avenue Landlord reserves all other rights, claims, and interests with respect to Lease, the Fifth Avenue Store, and any related matters (including, without limitation, all rights under 11 U.S.C. 365(d)(3)).

**WHEREFORE**, the Fifth Avenue Landlord respectfully requests that this Court enter an order (i) compelling the Tenant to immediately pay the Stub Rent; and (ii) for such other and further relief as is just and proper.

Dated: October 17, 2024  
Wilmington, DE 19801

**ESBROOK P.C.**

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